QUARTERLY LAW UPDATE
COLORADO BAR ASSOCIATION BANKRUPTCY SUBSECTION
JULY 13, 2005

Presented by the Honorable Howard R. Tallman, United States Bankruptcy Judge and Aaron A. Garber, Esq., Kutner Miller, P.C.

Period: April 1, 2005 through June 30, 2005.

10th Circuit Court of Appeals

Alderete v. Educational Credit Mgmt. Corp. (In re Alderete), 2005 U.S. App. LEXIS 12911 (10th Cir. June 29, 2005)

The debtors filed for relief under Chapter 7 of the Bankruptcy Code. The Debtors initiated an action seeking to discharge their student loans under 11 U.S.C. § 523(a)(8) on the grounds that the repayment of the loans created an "undue hardship." The Bankruptcy Court found no "undue hardship" but used its equitable power to discharge a portion of the student loans. The Bankruptcy Appellate Panel affirmed the partial discharge. The creditor appealed.

The debtors received associate degrees in visual communications and financed their education by taking student loans. Their student loans represented over 98% of their total unsecured debt. Neither had a job utilizing their degree, nor had either sought employment in the visual arts field. The husband did landscape work and the wife was an educational assistant.

Under 11 U.S.C. § 523(a)(8), the Tenth Circuit upheld the Bankruptcy Court's determination that the debtors failed to establish that their student loans created an undue hardship. The Court noted that it had previously adopted the three part test established by the Second Circuit in Brunner v. New York State Higher Ed. Servs. Corp., 831 F.2d 395 (2d Cir. 1987). See Educational Credit Mgmt. Corp. v. Pollys, 365 F.3d 1302 (10th Cir.). The debtor must meet the following three criteria to establish undue hardship:

> (1) that the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living for herself and her dependents if forced to repay the loans;
>
> (2) that additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and
>
> (3) that the debtor has made good faith efforts to repay the loans.

Id. at 1307. If the court finds that the debtor cannot satisfy any element of the three part test, the student loan is not dischargeable.

The Tenth Circuit found that the second prong was not satisfied because no health conditions or other exceptional circumstances impeded the debtors' ability to work and repay the student loans. The third prong of the test was not satisfied because the debtors had not made a good-faith effort to repay their student loans since they had only made minimal payments on their loans, the loans accounted for the majority of their debt and they failed to consider alternate repayment options available for the lender that would have significantly reduced their payments.

The Tenth Circuit reversed the Bankruptcy Court's partial discharge of the loans, holding that the Bankruptcy Court cannot exercise its equitable powers under 11 U.S.C. § 105(a) to grant a partial discharge of a student loan unless 11 U.S.C. § 523(a)(8) is satisfied.

United States District Court for the District of Colorado

Fowler & Peth, Inc. v. Regan (In re Regan), 2005 U.S. Dist. LEXIS 10799 (D. Co. May 27, 2005)

The debtors filed for relief under Chapter 7 of the Bankruptcy Code. The Bankruptcy Court determined that a debt owed by the debtors' roofing company to a creditor, a materialman, was nondischargeable and that the debtors were personally liable under Colorado's Mechanics' Lien Trust Fund Statute, C.R.S. § 38-22-127 (the "Trust Fund Statute") that provides:

> All funds disbursed to any contractor or subcontractor under any building, construction, or remodeling contract or on any construction project shall be held in trust for the payment of the subcontractors, labor or material suppliers, or laborers who have furnished laborers, materials, services, or labor, ***who have a lien, or may have a lien, against the property***, or who claim, or may claim against a principal or surety under the provisions of this article and for which such disbursement was made. (emphasis added).

The Bankruptcy Court's finding that the debt was nondischargeable in the bankruptcy case was predicated on 11 U.S.C. § 523(a)(4). Thus, the Bankruptcy Court had to find that the fraud or defalcation occurred while the company was acting in a fiduciary capacity to the creditor.

The District Court concluded the Trust Fund Statute did not apply; thus, a fiduciary relationship did not exist and the debt was dischargeable. The creditor did not have a lien on any of the company's properties. The time for the creditor to file and perfect a mechanics lien had also expired. The District Court held that upon expiration of the perfection period under Colorado's Mechanics Lien Statute, the fiduciary relationship between the company and the creditor also expired.

The "may have a lien" portion of the Trust Fund Statute was intended to limit the Trust Fund Statute to the period of time that a creditor has to file and perfect a mechanics

lien. After this period expires, if a creditor has not perfected its mechanic lien, the fiduciary relationship under the Trust Fund Statute expires.

Stetson Ridge Assocs. v. Walker (In re Walker), 2005 U.S. Dist. LEXIS 9941 (D. Co. May 23, 2005)

The debtor was the one of the principals of a now defunct construction subcontractor (the "company"). Creditor was a general contractor. Creditor initiated an adversary proceeding contesting the discharge of is indebtedness for unpaid mechanic's liens under 11 U.S.C. § 523(a)(4). Creditor asserted that the debtor was a fiduciary under the Trust Fund State. The debtor raised three defenses: (1) that he could not be held personally liable for the violation of the Trust Fund Statute; (2) that the company did not breach the Trust Fund Statute, and (3) creditor did not have standing to assert a violation under the Trust Fund Statute.

The Bankruptcy Court held that it is settled in this jurisdiction that officers may be held liable under the Trust Fund Statute and nothing in the Colorado Supreme Court's recent decision limiting the liability of officers under the Colorado Wage Claim Act changed this result. The Bankruptcy Court also held that facts supported a finding that the Trust Fund Statute had been violated. However, the Bankruptcy Court held that the Trust Fund Statute does not create a fiduciary relationship with an owner or general contractor of a project so as to create standing under 11 U.S.C. § 523(a)(4).

On appeal, the District Court agreed with the Bankruptcy Court's factual finding and the Court's conclusion that the Trust Fund Statute applied to officers of a company. The District Court reversed the Bankruptcy Court decision concerning standing, citing a line of cases that had held otherwise and concluding that the Colorado Supreme Court, if faced with the question, would hold that the Trust Fund Statute does apply to owner and general contractors.

United States Bankruptcy Appellate Panel for the Tenth Circuit

Azwar v. Tex. Guaranteed Student Loan Corp. (In re Azwar), 2005 Bankr. LEXIS 1204 (B.A.P 10th Cir. June 27, 2005)

The debtor filed for Chapter 7 bankruptcy, and sought to discharge his student loan debts. The creditors objected, but the Bankruptcy Court discharged the student loan under the undue hardship provision of 11 U.S.C. § 523(a)(8). The creditors appealed.

The B.A.P. held that the debtor failed to demonstrate "undue hardship" because a realistic look into the debtor's circumstances did not suggest that he would be unable to earn income in the foreseeable future that would allow him to repay his student loan debt due to the fact that the debtor was healthy, well-educated, and employed. The debtor also failed to prove "good faith" because he sought to discharge his student loan debt only three years after obtaining his master's degree. The relatively short period of time made

the good faith of his discharge request suspect. Additionally, the debtor failed to show that he was unable to earn a sufficient income to support himself and his family and repay his student loan debt. The Court also found that the debtor was not actively maximizing his personal and professional resources, including attempting to find work in his field, to obtain a higher paying job, and was not willing to relocate to obtain a higher paying job. The debtor also had not shown that his degree did not aid him in finding a higher paying job or that his skill set was outdated or that his spouse could not obtain a job. Lastly, the debtor had not demonstrated that his family was actively minimizing current household living expense or that repayment of his loans would require his family to do without the basic necessities.

First Nat'l Bank v. Cribbs (In re Cribbs), 2005 Bankr. LEXIS 1188 (B.A.P 10th Cir. June 24, 2005)

A bank appealed the Bankruptcy Court's decision granting a Chapter 7 debtor a discharge over the creditors objection brought under 11 U.S.C. § 523(a)(2)(B). The bank argued the debtor intended to deceive the bank with a false financial statement and that it reasonably relied on the financial statement in loaning the debtor funds for a construction project.

The B.A.P., upholding the Bankruptcy Court's findings, stated that it is the creditor's burden to prove each element of its claim by a preponderance of the evidence. To establish a claim under 11 U.S.C § 523(a)(2)(B), the bank must show reliance in fact – that it actually relied on the financial information and such reliance was reasonable. The Bankruptcy Court found that the debtor lacked fraudulent intent when he submitted the false financial statement. He had construction experience but did not understand the difference between a promissory note and an anticipation of profits. He was unaware of the legal significance of which entities, including a trust, owned which assets. The debtor testified he believed the financial statement provided to the bank was accurate. Having assessed the debtor's demeanor and testimony, and finding him credible, the Bankruptcy Court's findings of a lack of fraudulent intent were supported by the record. The bank had denied a first request for a loan, suggesting the debtor consider investors in the project. Only with the involvement of two investor/guarantors did the bank grant the loan. The bank did not investigate the existence of the assets on the financial statement or verify the strength of the debtor's financial situation for a loan of almost $ 3 million. Despite inconsistencies, the bank took no steps to have the financial statement corrected or signed, and did not investigate or verify the existence of the assets listed. The loan officer's statements of reliance were contradicted by the bank's own conduct and its lack of investigation despite errors on the face of the financial statement.

InteliQuest Media Corp. v. Miller (In re InteliQuest Media Corp.), 2005 Bankr. LEXIS 982, (B.A.P. 10th Cir. 2005 June 6, 2005)

Debtors sought review of an order of the Bankruptcy Court, denying, on the basis of res judicata, their motion to compel the Chapter 7 trustee to seek a surcharge of the

lender's collateral to pay their attorney's fees and expenses, pursuant to 11 U.S.C. § 506(c).

The Bankruptcy Court approved a post-petition financing stipulation with the lender by which the debtors waived Section 506(c) claims against secured parties. After conversion of the case to Chapter 7, the Bankruptcy Court approved the Chapter 7 trustee's stipulation that the lender satisfied the trustee's Section 506(c) claims for surcharges against the lender and its collateral. The debtors filed a motion to compel the trustee to prosecute Section 506(c) claims for fees and costs against the lender's collateral. The B.A.P. held that the Bankruptcy Court properly denied the motion on the ground that the debtors' waivers contained in previously-entered financing orders were res judicata.

Whiting v. Gillman (In re Whiting), 2005 Bankr. LEXIS 863, (B.A.P. 10th Cir. May 19, 2005)

The Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. A Chapter 11 trustee was subsequently appointed in the case. Among the assets the trustee obtained control of was a state court lawsuit existing between the debtor and a creditor (the "State Court Action"). The trustee settled the State Court Action and filed a motion pursuant to Bankruptcy Rule 9019 to approve the settlement. The Debtors filed an objection, offering to pay more than the settlement amount and requesting that the State Court Action be surrendered to them. The Court denied the settlement motion, stating it was not in the best interest of creditors. The trustee entered into a sale agreement with the debtors. The creditor filed an objection requesting that bidding procedures be put in place. The trustee adopted the creditor's proposed procedures, including a requirement that any bidder be qualified as a good faith purchaser. The creditor was the winning bidder. The debtors objected, claiming that they could provide a better recovery for creditors if they successfully litigated the State Court Action. The Bankruptcy Court overruled the objection and approved the sale.

In vacating the Bankruptcy Court's decision, the B.A.P. held that the Bankruptcy Court failed to make an independent determination regarding the propriety of the sale and the status of the company as a good faith purchaser of the claim. The B.A.P treated the sale as a settlement between the creditor and the trustee. The B.A.P therefore remanded the matter for the Bankruptcy Court to make independent findings as to the appropriateness of the settlement using the factors set forth in In re Kopexa Realty Venture, 213 B.R. 1020 (10th Cir. B.A.P. 1997): the court must considered the probable success of the underlying litigation on the merits, the possible difficulty in collection of a judgment, the complexity and expense of the litigation, and the interests of creditors in deference to their reasonable views. Id. at 1022. Since relief was also sought under Section 363, and as required by the bidding procedures, the Bankruptcy Court was also directed to make a determination as to the good faith status of the purchaser.

United States Bankruptcy Court for the District of Colorado

In re Angela Marie Garberding, Case No. 04-10632-SBB Hill v. Koching, et al., Adversary Proceeding No. 04-01730-SBB. Colo.Rev.Stat. §§ 13-54-102(1)(j)(I), 42-6-107; 11 U.S.C. §§ 522, 541 and 544

The Chapter 7 Trustee brought an adversary proceeding against the Debtor and her boyfriend seeking turnover of a 1983 automobile valued at about $1,000.00. The stipulated evidence was that the Debtor purchased the automobile because her boyfriend could not get a loan to finance the car. The parties agree that the certificate of title on the automobile is in the Debtor's name. The loan term was 48 months and the Debtor never made a single payment out of her own funds on the loan, insurance for the automobile, or the maintenance of the automobile.

The Trustee asserted that the certificate of title on the car was *prima facie* evidence of ownership. The Court recognized the same, but went on to conclude, in accordance with the statute, that the presumption is rebuttable. Here, because of the unique circumstances in this case, whereby the Debtor never made a single payment out of her own funds on the loan, for insurance, or for maintenance on the car, and she never drove the automobile, the automobile was not property of the estate.

TONEE BUWANA a/k/a Anthony Gaddy, Plaintiff, v. U.S. DEPARTMENT OF EDUCATION, Defendant.

In dealing with an issue of apparent first impression in this District and Circuit, the Court concluded that a loan consolidation entered into by the Debtor prepetition, but funded postpetition, was either not discharged under 11 U.S.C. § 727(b) or nondischargeable under 11 U.S.C. § 523(a)(8)(A). The Debtor prepetition sought to consolidate student loans entered into in 1980. Debtor executed the consolidated loan in July of 1996. Thereafter, the Debtor filed for Chapter 7 bankruptcy relief on November 18, 1996. The student loan was then funded on November 20, 1996. At the time of the filing of the bankruptcy case, 11 U.S.C. § 523(a)(8)(A) allowed for a determination that a student loans guaranteed by a governmental unit was dischargeable if the loan first became due more than 7 years before the date of the filing of the petition. The Court analyzed the question under a novation analysis and under an analysis based on the case law. Under the novation analysis, the loan was a postpetition debt that was not discharged under 11 U.S.C. § 727(b). However, under an analysis looking at the cases of Clarke v. Paige (In re Clarke), 266 B.R. 301

(Bankr. E.D.Pa. 2001) and Stricklen v. W.D. Ford Direct Consolidation (In re Stricklen), the Court concluded that the consolidation loan became effective on the date it was signed. Thus, it was a prepetition debt that was not dischargeable under 11 U.S.C. §

523(a)(8)(A) as it did not first become due more than 7 years before the date of the filing of the petition.

Clarence Joseph Ebel v. Dennis King, Trustee, et al.; Case No. 03-1443 HRT; Order entered April 28, 2005.

The hallmark of this fifteen year old bankruptcy case is the Debtor's seemingly limitless appetite for litigation. He presses on, despite the fact that the results of his litigation efforts have rarely been favorable to his various legal positions. This chapter of the saga finds our Debtor suing the chapter 7 trustee on the theory that the trustee has breached his fiduciary duties to the Debtor. The Court's opinion discusses the nature of the duties that a bankruptcy trustee may owe to a bankruptcy debtor; whether the Debtor even has standing to pursue his various claims; and the standard in the Tenth Circuit for imposing personal liability on a bankruptcy trustee.

Hepner v. PWP Golden Eagle Tree, LLC, Adversary No. 04-1500.

The Court, applying § 506(b), upheld an over-secured creditor's claim to a 36% per annum default interest rate, accruing post-petition, holding that non-bankruptcy, state law controlled and declining to apply equitable considerations or a reasonableness standard to this rate of interest. The Court disallowed $15,146.75 as not being reasonable fees, costs or charges under § 506(b). The Court also ruled that the manner in which the secured creditor applied a partial payoff by the Chapter 11 trustee did not violate the Court's order authorizing that partial payoff, and thus did not constitute contempt. Finally, the Court found § 1123(a)(5)(G) and § 1124(2) concerning cure of defaults in a plan and non-impairment of claims do not nullify an over-secured creditor's right to a default rate of interest.

In re: Miniscribe Corporation, Case No. 90-00001-SBB

Ostensibly, the Debtor, by and through counsel, sought the Court's Order to Permit the Withdrawal of Unclaimed Funds to the Debtor. The reason the Court couches the term Debtor with "ostensibly" is because attached to the Motion is a Limited Power of Attorney executed by Richard P. Rifenburgh, who is represented to be, in the present grammatical tense, the CEO and Stockholder of the Debtor. The document giving the law firm authority to perform the legal work for the Debtor was executed in September of 2003, a full year before the Trustee's Final Report and closing of the case. This brings into question whether counsel represents the entity or Mr. Rifenburgh, the individual.

The issue before the Court was whether the Movant was entitled to an Order allowing for the withdrawal of these unclaimed funds. Under 28 U.S.C. § 2042, "[n]o money deposited under section 2041 ... shall be withdrawn except by order of court. The statute further provides that: "[a]ny claimant entitled to such money may ... on petition to the

court and upon notice to the United States attorney and full proof of the right thereto, obtain an order directing a payment to him." (emphasis added). Under section 2042, the burden of proof is upon the Movant to show its right to the fund. The Movant must satisfy the preponderance standard of proof.

The Court concluded that the Movant did not satisfy its burden because the evidence presented to the Court was based on hearsay, otherwise inadequate, not competent, compelling or even persuasive. Moreover, the timing of the execution of the Limited Power of Attorney, together with its terms for payment to counsel, brought into question whom or what counsel represented in this matter.

NLRB v. Gordon (In re Gordon); Case No. 03-1330 HRT; Order entered May 26, 2005.

In this final phase of the nearly two year old adversary proceeding, the Debtor asked for an assessment of attorney fees and costs against the government for having brought a complaint to determine dischargeability of its judgment against the Debtor for labor law violations under the National Labor Relations Act. The Debtor's request was brought under the Equal Access to Justice Act ["EAJA"]. EAJA is a federal fee-shifting statute allowing an award of costs and attorney fees in favor of the "prevailing party" in litigation against the government where the position taken by the government is not "substantially justified." The Debtor claimed to be the "prevailing party" in this case because the NLRB withdrew its complaint shortly before trial. The Court discusses whether or not, under the circumstances, the Debtor was the "prevailing party" and whether or not the position of the government was "substantially justified."

In re Virginia N. Delap; Case No. 04-28349 HRT; Order entered May 16, 2005.

A creditor of the estate objected to the Debtor's claimed homestead exemption in her former marital residence. The Debtor's interest is an equitable interest created by a marital separation agreement and the Debtor no longer lived in the marital residence on the petition date. The Court's opinion discusses the application of Colorado's homestead exemption to such equitable interests and the case law concerning the how the homestead exemption is shared among interested parties.

In re Sharon Epperson, Case No. 03-32027 ABC

Chapter 7 Trustee and creditor objected to Debtor's claim that her right to recover damages in state court action against insurance company for alleged wrongful breach of contract was exempt under Colorado statute as "damages for personal injuries." The Court ruled that the Trustee's joinder in the creditor's exemption was timely, thus obviating any issue of creditor's standing. The Court noted that, under Colorado law, a plaintiff may recover a complete range of non-economic damages for the willful and wanton breach of an insurance contract and that these damages would be exempt as "damages for personal injury" to the extent they were compensation for an injury to the well-being or mental or physical health of the victim. The Court held the matter in

abeyance to allow the extent and nature of the Debtor's claims against the insurance company to be determined in the state court.

LLS NO. _____ SENATE BILL

BY SENATOR _____

A BILL FOR AN ACT

CONCERNING ASSETS EXEMPTED FROM SEIZURE IN DEBT COLLECTION PROCEEDINGS, AND, IN CONNECTION THEREWITH, INCREASING THE SCOPE AND VALUE OF ASSETS THAT MAY BE EXEMPTED TO HELP AMELIORATE THE IMPACT OF THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005.

Bill Summary

"Changes to Exemptions Allowed in Debt Collection and/or Bankruptcy Proceedings"

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Increases the amounts of property which are exempt from attachment, execution, and garnishment to reflect inflation as well as the replacement in our society of obsolete assets by more modern and versatile items. Provides for automatic increases every three years based on the Consumer Price Index. Adds an exemption applicable only in bankruptcy proceedings in an amount not to exceed $1,000 plus up to $5,000 of any unused amount for a homestead exemption.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. 13-54-102 (1)(a), (1)(b), (1)(c), (1)(e), (1)(f), (1)(g), (1)(i), (1)(j), (1)(k), (1)(o), Colorado Revised Statutes, 1987 Repl. Vol., are amended to read:

13-504-102. Property Exempt. (1) The following property is exempt from levy and sale under writ of attachment or writ of execution:

(a) The necessary wearing apparel of the debtor and each dependent to the extent of ~~one thousand five hundred~~ THREE THOUSAND dollars in value;

(b) Watches, jewelry, and articles of adornment of the debtor and each dependent to the extent of one thousand dollars PLUS THE VALUE OF DEBTOR'S ENGAGEMENT AND WEDDING RINGS, BUT NOT TO EXCEED IN THE AGGREGATE VALUE OF TWO THOUSAND dollars ~~in value~~.

(c) The library, family pictures, and school books of the debtor and his dependents to the extent of ~~seven hundred fifty~~ ONE THOUSAND FIVE HUNDRED dollars in value; except that this paragraph (c) shall not apply to any such property constituting all or part of the stock in trade of the debtor;

(e) The household goods owned and used by the debtor and used by his dependents to the extent of ~~three thousand~~ FIVE THOUSAND dollars in value;

(f) Provisions and fuel on hand for the use or consumption of the debtor or his dependents to the extent of ~~six hundred~~ ONE THOUSAND dollars in value;

(g) In the case of every debtor engaged in agriculture as an occupation, including, but not limited to, farming, ranching, dairy, and the raising of livestock or poultry, all livestock, poultry, or other animals, and all tractors, implements, trucks, harvesting equipment, seed, machinery, and tools in the aggregate value of ~~twenty five thousand~~ FIFTY THOUSAND dollars;

(j)(I) One or more motor vehicles or bicycles kept and used by any debtor for the purpose of carrying on any gainful occupation in the aggregate value of ~~three thousand~~ SIX THOUSAND dollars;

(II)(A) One or more motor vehicles kept and used by any elderly or disabled debtor, or by any debtor with an elderly or disabled spouse or dependent, for the purpose of obtaining medical care for himself or his elderly or disabled spouse or dependent. The value of the vehicles shall not exceed ~~six thousand~~ TEN THOUSAND dollars.

(k) The library of any debtor who is a professional person, including a minister or priest of any faith, kept and used by him in carrying on his profession, in the value of ~~three thousand~~ FIVE THOUSAND dollars; except that exemptions with respect to any of the property described in this paragraph (k) may not also be claimed under paragraph (i) of this subsection (1);

(i) The stock in trade, supplies, fixtures, maps, machines, tools, electronics, equipment, books, ACCOUNTS RECEIVABLES, INVENTORY, and business materials of any debtor used and kept for the purpose of carrying on any gainful occupation in the aggregate value of ~~ten thousand~~ TWENTY FIVE THOUSAND dollars.

(n) The proceeds of any claim for damages for personal injuries suffered by any debtor, INCLUDING ANY CLAIMS FOR LOST WAGES OR OTHER ECONOMIC LOSSES, except for obligations incurred for treatment of any kind for such injuries or collection of such damages.

(o) The full amount of any federal or state earned income tax credit refund AND ANY PORTION OF A TAX REFUND ATTRIBUTED TO THE CHILD TAX CREDIT.

SECTION 6. 38-41-201, Colorado Revised Statutes, 1987 Repl. Vol., is amended to read:

38-41-201. Homestead exemption. Every homestead in the state of Colorado occupied as a home by the owner thereof or his family shall be exempt from execution and attachment arising from any debt, contract, or civil obligation not exceeding in value the sum of ~~forty-five thousand~~ ONE HUNDRED THOUSAND dollars in actual cash value in excess of any liens or encumbrances on the homesteaded property in existence at the time of any levy of execution thereon, EXCEPT THAT IF THE DEBTOR AND ALL OTHER PERSONS ON TITLE ARE SIXTY-FIVE YEARS OF AGE OR OLDER, THE HOMESTEAD EXEMPTION AMOUNT SHALL BE ONE HUNDRED TWENTY FIVE THOUSAND DOLLARS.

[NOTE – The following "wild card" exemption was rejected previously in 2000].

SECTION 4. 13-54-102, Colorado Revised Statutes, 1987 Repl. Vol., is amended to add the following subsections 2 and the existing subsections shall be renumbered accordingly:

(2) FOR PURPOSES OF BANKRUPTCY PROCEEDINGS PURSUANT TO TITLE 11 OF THE UNITED STATES CODE, EACH DEBTOR SHALL BE ENTITLED TO EXEMPT, IN ADDITION TO THE EXEMPTIONS PROVIDED UNDER THE PROVISIONS OF SUBSECTION 1 OF THIS SECTION, THE DEBTOR'S AGGREGATE INTEREST IN ANY PROPERTY, NOT TO EXCEED IN VALUE ONE THOUSAND DOLLARS, PLUS UP TO FIVE THOUSAND DOLLARS OF ANY UNUSED AMOUNT OF A HOMESTEAD EXEMPTION.

[NOTE - The following indexing (with dates changed) was rejected previously in 2000].

SECTION 5. 13-54-102, Colorado Revised Statutes, 1987 Repl. Vol., is amended to add the following paragraph:

(5) (a) THE OFFICE OF CONSUMER PROTECTION OF THE ATTORNEY GENERAL'S OFFICE OF THE STATE OF COLORADO SHALL TRANSMIT TO THE LEGISLATURE AND TO THE GOVERNOR BEFORE SEPTEMBER 1, 2007, AND BEFORE SEPTEMBER 1 OF EVERY 3RD YEAR THEREAFTER, A RECOMMENDATION FOR THE UNIFORM PERCENTAGE ADJUSTMENT OF EACH DOLLAR AMOUNT IN THIS TITLE.

(b) ON JANUARY 1, 2008, AND AT EACH 3-YEAR INTERVAL ENDING ON JANUARY 1 THEREAFTER, EACH DOLLAR AMOUNT IN EFFECT UNDER SECTIONS 13-54-102, 38-41-201, AND 38-41-201.6 IMMEDIATELY BEFORE SUCH JANUARY 1 SHALL BE ADJUSTED --

(I) TO REFLECT THE CHANGE IN THE CONSUMER PRICE INDEX FOR ALL URBAN CONSUMERS, DENVER-BOULDER-GREELEY, COLORADO AREA, PUBLISHED BY THE DEPARTMENT OF LABOR, FOR THE MOST RECENT 3-YEAR PERIOD ENDING IMMEDIATELY BEFORE SEPTEMBER 1 PRECEDING SUCH JANUARY 1, AND

(II) TO ROUND TO THE NEAREST $100 THE DOLLAR AMOUNT THAT REPRESENTS SUCH CHANGE.

(c) ADJUSTMENTS MADE IN ACCORDANCE WITH PARAGRAPH ABOVE SHALL NOT APPLY WITH RESPECT TO CASES COMMENCED BEFORE THE DATE OF SUCH ADJUSTMENTS.